

**FILED**

DISTRICT COURT OF GUAM

AUG - 9 2006

MARY L.M. MORAN  
CLERK OF COURT

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

ROBERTO J. DEL ROSARIO,

Plaintiff,

vs.

JAPAN AIRLINES INT'L CO., LTD.,

Defendant.

Civil Case No. 04-00028

**FINDINGS OF FACT  
and  
CONCLUSIONS OF LAW**

On April 20, 2006, the Court conducted an evidentiary hearing in conjunction with the Defendant's Motion to Enforce Settlement.<sup>1</sup> At the conclusion of said hearing, the Court GRANTED the Defendant's motion. The Court hereby sets forth the basis for its ruling herein.

**FINDINGS OF FACT**

1. On February 21, 2006, the parties consented in writing to proceed before the below-signed Magistrate Judge, and on February 22, 2006, the above-captioned case was referred to the below-signed Magistrate Judge in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. (Docket No. 35.)

2. On February 27, 2006, the Court issued an Order setting a Status Conference for March 1, 2006. (Docket No. 39.)

3. At the March 1<sup>st</sup> Status Conference, the Defendant's counsel David Ledger

<sup>1</sup> A formal written motion to enforce the settlement was not filed by the Defendant. The Court, nonetheless, decided that a written motion was unnecessary since the dispute before it was factual in nature and could be resolved through an evidentiary hearing.

1 advised the Court that on February 24, 2006, he had accepted what he believed was a valid  
2 counteroffer proffered by the Plaintiff's attorney William Gavras. (Minutes, Docket No. 41.)  
3 Mr. Ledger further informed the Court that on February 27, 2006, Mr. Gavras advised him that  
4 the Plaintiff now wished to proceed to trial. (Id.) Mr. Gavras confirmed the Plaintiff's then  
5 position to proceed forward with a trial date. (Id.) Because the Defendant believed that a valid  
6 settlement had been negotiated and reached, Mr. Ledger's position was that a trial was no  
7 longer necessary. Based on the current posture of the case and the uncertainty surrounding the  
8 alleged settlement, the Court vacated the trial date. (Id.)

9         4.       Thereafter, the Court ordered counsel to each file an affidavit setting forth the  
10 facts that transpired between them that resulted in the Defendant's belief that a valid and  
11 enforceable settlement was reached between the parties. (Docket No. 42.) The Court also  
12 afforded the Plaintiff the opportunity to file a separate affidavit himself. (Id.)

13         5.       The Plaintiff filed an affidavit on March 7, 2006. (Docket No. 44.) Therein,  
14 the Plaintiff asserted that Mr. Gavras was not authorized to make said offer on his behalf. (Id.  
15 at ¶6.)

16         6.       Mr. Gavras and Mr. Ledger each filed an affidavit on March 10, 2006. (Docket  
17 Nos. 45 & 46 respectively.) Mr. Gavras filed a Second Affidavit (Docket No. 48) on  
18 March 23, 2006, to clarify a misstatement in his original affidavit.

19         7.       The Court finds that the Ledger and Gavras affidavits are consistent in their  
20 material assertions regarding the events leading up to the settlement. In particular, both counsel  
21 essentially state as follows: (i) in February 2006, Mr. Gavras, with the Plaintiff's authorization,  
22 offered to settle the case for \$200,000.00; (ii) Mr. Ledger, on behalf of the Defendant, rejected  
23 this offer and instead proposed to settle the case for \$90,000.00; (iii) after communicating with  
24 the Plaintiff, Mr. Gavras telephoned Mr. Ledger and rejected the Defendant's \$90,000  
25 counteroffer, but countered with an offer of \$175,000.00; (iv) shortly thereafter, Mr. Ledger  
26 accepted the Plaintiff's \$175,000 offer. (Docket Nos. 46 & 48.)

27         8.       After considering the affidavits, the Court determined that there was still some  
28 uncertainty surrounding the alleged settlement and, thus, set the matter for a Status Conference

1 on March 30, 2006. (Docket No. 50.)

2 9. At the March 30<sup>th</sup> Status Conference, the Court scheduled an evidentiary hearing  
3 for April 20, 2006, for the purpose of taking evidence to determine whether the parties had  
4 entered into a binding settlement and whether Mr. Gavras was authorized to enter into such an  
5 agreement. (Minutes, Docket No. 52.) The Court advised the Plaintiff that he had the option  
6 of retaining separate counsel to assist him at said hearing since Mr. Gavras would likely be  
7 called as a witness. (Id.) The Plaintiff was given two weeks to make a decision. (Id.)

8 10. On April 12, 2006, the Plaintiff filed a motion seeking to (i) terminate  
9 Mr. Gavras as his counsel; (ii) continue this matter for 60 days to enable him to find new  
10 counsel; and (iii) disqualify Mr. Ledger as counsel for the Defendant. (Docket No. 54.) The  
11 Court scheduled said motion for hearing on the same date as the evidentiary hearing. (Order,  
12 Docket No. 55.)

13 11. On April 17, 2006, the Defendant filed its opposition to the Plaintiff's motion  
14 and requested that sanctions be imposed against the Plaintiff. (Docket No. 58.)

15 12. On April 18, 2006, Mr. Gavras filed a Statement of Non-Opposition to the  
16 Plaintiff's request that he be removed as counsel. (Docket No. 59.)

17 13. On April 19, 2006, the Plaintiff filed a reply brief and responded to the  
18 Defendant's request for sanctions. (Docket No. 60.)

19 14. At the April 20<sup>th</sup> evidentiary hearing, the Court instructed the parties that for  
20 purposes of the evidentiary hearing and deciding the issues, the Court would treat the matter  
21 as a motion by the Defendant to enforce the settlement agreement, although no formal written  
22 motion had been filed by the Defendant. The Plaintiff informed the Court that he would  
23 represent himself during the hearing. The Court took no further action on the Plaintiff's motion  
24 to terminate Mr. Gavras as his counsel since it recognized the Plaintiff's right to counsel of his  
25 choosing. The Court thereafter denied the Plaintiff's motion for a 60-day continuance, denied  
26 the Plaintiff's motion to disqualify Mr. Ledger from representing the Defendant, and denied the  
27 Defendant's motion for sanctions.

28 15. The Defendant called Mr. Gavras as its only witness. Mr. Gavras testified as to

1 his fifteen (15) years of law practice and experience handling personal injury cases. Mr. Gavras  
2 stated that he has resolved approximately 95% of his personal injury cases by way of settlement  
3 with opposing counsel as opposed to resolution through trial or arbitration.

4 16. Mr. Gavras testified that he had an attorney-client relationship with the Plaintiff  
5 until the Plaintiff terminated his services. In particular, Mr. Gavras testified that his attorney-  
6 client relationship with the Plaintiff was intact in February 2006, when he and Mr. Ledger  
7 negotiated the terms of the settlement in dispute herein.

8 17. Mr. Gavras further testified that on February 24, 2006, Mr. Ledger was entitled  
9 to rely on Gavras's apparent authority to make settlement offers on behalf of the Plaintiff in this  
10 action.

11 18. The Court finds that at all times material to these proceedings, Mr. Gavras had  
12 an attorney-client relationship with the Plaintiff. The Court also finds that Mr. Gavras was  
13 counsel of record in this action beginning on June 8, 2004, when the Complaint was filed, until  
14 April 12, 2006, when the Plaintiff filed a motion to terminate the services of Mr. Gavras.

15 19. As to the specifics regarding the settlement at issue, Mr. Gavras testified that as  
16 the trial date approached, the parties agreed to give settlement one last try. With the consent  
17 of the Plaintiff, Mr. Gavras telephoned Mr. Ledger and offered to settle the action for  
18 \$200,000.00. Mr. Gavras stated that Mr. Ledger rejected the offer and countered with a figure  
19 of \$80,000.00 but then raised it to \$90,000.00. Mr. Gavras testified that he communicated the  
20 \$90,000 counteroffer to the Plaintiff who then rejected it. The Plaintiff, however, authorized  
21 Mr. Gavras to then offer \$175,000.00. This offer was conveyed to Mr. Ledger, who later  
22 accepted it on behalf of the Defendant.

23 20. Mr. Gavras testified that he believed the \$175,000 offer was in the Plaintiff's  
24 best interest.

25 21. The Plaintiff testified on his own behalf and denied that he authorized Mr.  
26 Gavras to settle this action for either \$175,000.00 or \$200,000.00.

27 22. Having had the opportunity to hear the testimonies and observe the demeanor  
28 of both the Plaintiff and Mr. Gavras, the Court finds Mr. Gavras's testimony to be more

1 credible. Accordingly, the Court finds that the Plaintiff authorized Mr. Gavras to settle this  
2 action for \$175,000.00.

3 23. Because the testimony of Gavras and Plaintiff differed on the issue of whether  
4 or not Gavras had authority to make the settlement offer, the Court determined that it must  
5 assess the credibility of each witness and the testimony given.

6 24. After due consideration, the Court finds that the credibility balance tips  
7 sufficiently in favor of Gavras such that the Court credits Mr. Gavras's testimony over that of  
8 Plaintiff. Accordingly, the Court finds that Plaintiff authorized Gavras to settle the action for  
9 \$175,000.00.

### 10 CONCLUSIONS OF LAW

11 1. The Court has jurisdiction to decide the issues raised by these proceedings in  
12 that (I) the parties executed the *Consent to the Exercise of Jurisdiction by a United States*  
13 *Magistrate Judge*; and (ii) then designated District Judge James L. Robart executed the  
14 *Order of Reference*. (Docket No. 35.)

15 2. "An agent has such authority as the principal, actually or ostensibly, confers  
16 upon him." 18 GUAM CODE ANN. § 20212.

17 3. "Actual authority is such as a principal intentionally confers upon the agent,  
18 or intentionally, or by want of ordinary care, allows the agent to believe himself to possess."  
19 18 GUAM CODE ANN. § 20213.

20 4. "Ostensible authority is such as a principal intentionally, or by want of  
21 ordinary care, causes or allows a third person to believe the agent to possess." 18 GUAM  
22 CODE ANN. § 20214.

23 5. "An agent represents his principal for all purposes within the scope of his  
24 actual or ostensible authority, and all the rights and liabilities which would accrue to the  
25 agent from transactions within such limit, if they had ben entered into on his own account,  
26 accrue to the principal." 18 GUAM CODE ANN. § 20301.

27 6. "A principal is bound by the acts of his agent, under a merely ostensible  
28 authority, to those persons only who have in good faith and without want of ordinary care

1 incurred a liability or parted with value, upon the faith thereof.” 18 GUAM CODE ANN.  
2 § 20305.

3 6. It is undisputed that Mr. Gavras was counsel of record for the Plaintiff from at  
4 least June 8, 2004, when the Complaint was filed, until April 12, 2006, when Plaintiff  
5 terminated the services of Mr. Gavras.

6 7. Mr. Gavras acted as the attorney and the agent for the Plaintiff when he  
7 negotiated the settlement with Mr. Ledger.

8 8. At no time material to the issues raised herein did Mr. Ledger have reason to  
9 doubt the existence of an attorney-client relationship, and thus an agency relationship, between  
10 Mr. Gavras and the Plaintiff.


11 9. Accordingly, Mr. Ledger was entitled to rely on Mr. Gavras’s actual and  
12 ostensible authority in February 2006, and in particular on February 24, 2006, when Mr. Gavras  
13 conveyed an offer to settle the action for \$175,000.00.

14 10. On February 24, 2006, Mr. Gavras, on behalf of the Plaintiff and with his  
15 authority, conveyed to Mr. Ledger a valid offer to settle this action for \$175,000.00.

16 11. On February 24, 2006, the Defendant, through its counsel Mr. Ledger, timely  
17 and unconditionally accepted the Plaintiff’s offer to settle for \$175,000.00.

18 12. Therefore, the Court concludes that on February 24, 2006, the parties entered  
19 into a binding contract to settle this action for \$175,000.00.

20 SO ORDERED this 8<sup>th</sup> day of August 2006.

21  
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23   
24 Joaquin V.E. Manibusan, Jr.  
25 U.S. Magistrate Judge  
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